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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

BRITTNEY GLASS,

Plaintiff and Appellant,

v.

VEROS CREDIT, LLC,

Defendant and Respondent.

G055257

(Super. Ct. No. 30-2014-00711537)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,  
Theodore R. Howard, Judge. Affirmed.

Rosner, Barry & Babbitt, Hallen D. Rosner, Arlyn L. Escalante, and Shay  
Dinata-Hanson for Plaintiff and Appellant.

Madison Harbor and Jenos Firouznam-Heidari for Defendant and  
Respondent.

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Brittney Glass appeals the trial court's order denying her motion for post-arbitration fees and for pre- and postjudgment interest. After an arbitrator found defendant and respondent Veros Credit, LLC, (Veros) and two other defendants jointly and severally liable for \$2,711 in restitution and \$170,295 in attorney fees, Glass obtained a trial court order confirming the award. She then sought an additional attorney fee award against Veros, the subsequent holder of a promissory note Glass gave for a used vehicle purchase, of approximately \$17,000, plus interest on the sums awarded by the arbitrator. Glass requested the additional attorney fees to cover her costs to confirm the award and to seek a writ of execution against Veros. The used vehicle purchase was the subject of the underlying arbitration.

While the arbitrator awarded Glass rescission and attorney fees as a statutory remedy (Civ. Code, § 1780, subd. (e)), Glass relied only on contractual attorney fee authority (Code Civ. Proc., §§ 685.040, 1033.5, subd. (a)(10)(A)) in seeking additional fees in the trial court. However, she submitted to the trial court no underlying contract with her fee request, nor asserted any contractual relationship with Veros. The court denied Glass's request for additional fees or interest against Veros. On appeal, Glass omits from her opening brief any challenge to the court's order denying interest on the arbitration award. As we explain, the trial court did not err in denying Glass's post-arbitration interest and attorney fee motion.

### **FACTUAL AND PROCEDURAL BACKGROUND**

In September 2013, Glass executed an installment contract to purchase a 2008 Dodge Caliber vehicle from South Coast Car Company, Inc. (SCCC). The contract included an arbitration clause. Veros subsequently obtained an interest in the promissory note Glass gave to secure the vehicle purchase.

In November 2013, Glass sent SCCC, SCCC's surety (Suretec), and Veros a letter with demands that included rescission of the contract and the return of her down

payment and monthly payments to date. When the parties could not resolve their dispute, Glass sued Veros, SCCC, and Suretec in March 2014. In October 2015, the trial court granted SCCC and Suretec's motion for reconsideration of their motion to compel arbitration.

In October 2016, the arbitrator entered a final award in Glass's favor, including findings that SCCC violated the Consumers Legal Remedies Act (CLRA; Civ. Code, § 1770, subd. (a)) and the Automobile Sales Finance Act (ASFA; see Civ. Code, § 2981 et seq.).

As to Veros, the arbitrator concluded that the Federal Trade Commission's Holder in Due Course Rule (the Holder Rule; see 16 C.F.R. § 433.2) "makes [Veros] liable for all claims that [Glass] can make against SCCC as a holder wherein [Glass] has paid financial expenditures as damages." Accordingly, the arbitrator found Veros jointly and severally liable for Glass's \$2,711 in restitution damages. The arbitrator also found Veros jointly and severally liable for attorney fees, expenses, and costs under the CLRA (Civ. Code, § 1780, subd. (e)), based on the fact that liability limitations in the Holder Rule refer only "to the amount of damages and not the statutory right to claim fees and costs as a prevailing party."

The arbitration award granted Glass rescission of the vehicle sales contract, cancellation of the accompanying loan, \$2,711.42 in restitution, \$170,294.50 in attorney fees, \$6,572.06 in costs, and \$3,184.00 in expenses to be paid jointly and severally by SCCC, Veros, and Suretec.

In November 2016, Glass filed a petition in the trial court to confirm the arbitration award, which Veros opposed, contending the arbitrator erred because the Holder Rule limited Veros's liability to the amounts Glass paid under the vehicle sales contract. The court confirmed the award as issued by the arbitrator.

In May 2017, following confirmation of the award, Glass filed the motion that is the subject of this appeal, seeking post-arbitration attorney fees, costs, and

prejudgment interest against Veros only.<sup>1</sup> Glass’s moving papers identified Code of Civil Procedure sections 685.040 and 1033.5, subdivision (a)(10)(A), as the basis for her motion. Glass sought \$17,204.50 in additional attorney fees, \$105.48 in costs, \$7,436.26 in prejudgment interest, and \$4,606.44 in postjudgment interest against Veros.

After a hearing, the trial court denied the motion. The court observed in its minute order that the arbitrator had found the defendants jointly and severally liable; “however, [Glass] seeks an order imposing individual liability on Veros Credit LLC.” The court concluded, “[Glass]’s motion fails to put forth any legal support or even any theory to support the request [for] an award of fees, costs and prejudgment interest against Veros, individually.”

Glass now appeals.

## **DISCUSSION**

Glass challenges the trial court’s order denying her motion for post-arbitration attorney fees and for pre- and postjudgment interest.

### **1. *Appealability***

As a preliminary matter, Veros contends that under the Federal Arbitration Act (FAA; 9 U.S.C. § 1 et seq.), the order is not appealable. We disagree.

The FAA specifically provides that “a final decision” with respect to an arbitration is appealable. (9 U.S.C. § 16(a)(3).) Veros contends the trial court’s order does not fall within this language because it did not end the litigation on the merits, “leav[ing] nothing for the court to do but execute the judgment,” as is typical of a final order. (Citing *Green Tree Financial Corp. v. Randolph* (2000) 531 U.S. 79, 86.) California law similarly provides under Code of Civil Procedure section 1294,

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<sup>1</sup> Glass filed and later withdrew a similar motion against Suretec after reaching a settlement with Suretec.

subdivision (c), that “[a]n intermediate ruling in an arbitration dispute that contemplates further proceedings *in arbitration* is not appealable.” (*Vivid Video, Inc. v. Playboy Entertainment Group, Inc.* (2007) 147 Cal.App.4th 434, 442, original italics.)

As Veros recognizes, Glass’s post-arbitration fee motion did not address the merits of the underlying dispute between the parties precisely because that dispute “was previously resolved” in the arbitration itself. The court’s post-arbitration order *was* final as to the issues Glass brought before the court in her motion: specifically, the court denied her requests for post-arbitration fees and interest on the award. Like the arbitration award itself, the trial court’s post-arbitration order contemplated no further proceedings in arbitration or otherwise. Consequently, under the terms of the FAA, the court’s final decision with respect to the issues it decided following the arbitration is appealable. (9 U.S.C. § 16(a)(3).)

## 2. *Interest*

Glass’s challenge to the trial court’s ruling denying interest on the sums the arbitrator awarded fails. Her post-arbitration motion sought a court order adding pre- and postjudgment interest to the arbitration award. In particular, the motion sought \$135 and \$68 for Glass in pre- and postjudgment interest, respectively, on the \$2,711 arbitral restitution award in her favor, plus \$7,301 and \$4,538 in pre- and postjudgment interest on the amounts the arbitrator awarded as attorney fees and costs.

While Glass identified in her notice of appeal the trial court’s “Ruling on Motion for [Post-Arbitration] Attorney Fees, Costs and Prejudgment Interest” as the subject of her appeal, her opening brief advances no argument contending the court erred in failing to award pre- or postjudgment interest. ““An appellate brief “should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration.””” (*Doe v. Lincoln Unified School Dist.* (2010) 188 Cal.App.4th 758, 767.) As a

fundamental precept of appellate jurisprudence, we must presume the lower court's rulings are correct, unless and until the appellant meets his or her burden to demonstrate error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.) As discussed with counsel during oral argument, Glass did not assert error in the court's ruling denying interest until her reply brief, depriving Veros of the opportunity to respond. Her appellate challenge concerning interest is therefore forfeited. (*Larson v. UHS of Rancho Springs, Inc.* (2014) 230 Cal.App.4th 336, 352-353.)

### 3. *Additional Attorney Fees*

Glass's challenge concerning post-arbitration attorney fees fails on the merits. She premised her motion in the trial court seeking those fees on Code of Civil Procedure section 685.040.<sup>2</sup> That section expressly provides that attorney fees "incurred in enforcing a judgment are *not* included in costs collectible under this title unless otherwise provided by law." (*Ibid.*, italics added.) But the only "law" on which Glass relied for post-arbitration attorney fees was section 1033.5, subdivision (a)(10)(A), which Glass's motion expressly acknowledged "provides that attorney fees may be awarded when authorized *by contract.*" (Italics added.)

Glass failed to furnish any contract purporting to authorize attorney fees against Veros in her moving papers. She also failed to attach the sales contract for her purchase of the 2008 Dodge Caliber, which, with its arbitration clause, formed the basis for the underlying arbitration proceedings. When the basis for a claim for attorney fees is contract language, a failure to provide the contract containing such language must be fatal to the claim. Glass's reliance on appeal on section 1033.5, subdivision (a)(10)(A), as the basis for her post-arbitration fee motion is also problematic because the arbitrator did not

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<sup>2</sup> All further undesignated statutory references are to the Code of Civil Procedure.

award Glass contractual attorney fees based on the underlying purchase agreement or note; instead, the arbitrator awarded her *statutory* attorney fees.

Specifically, the arbitrator found SCCC, Suretec, and Veros jointly and severally liable for attorney fees, expenses, and costs under Civil Code section 1780, subdivision (e), which provides those sums as a statutory remedy for CLRA violations, in addition to damages. The arbitrator concluded under federal law that limitations on a holder's liability apply only to the amount of damages and not the statutory right to claim fees and costs as a prevailing party.

Veros does not now dispute the correctness of the arbitrator's attorney fee ruling, as it is not subject to attack on appeal and therefore is not before us. Veros argues that Glass did not seek post-arbitration attorney fees pursuant to any statute, and instead that she requested attorney fees based only on the alleged terms of a contract. As noted above, Glass's moving papers did not include any such contract. In light of this record, we cannot say the trial court erred in denying Glass's post-arbitration fee motion on grounds that "Plaintiff's motion fails to put forth any legal support or even any theory" to support an award of post-arbitration attorney fees against Veros.

On appeal, Glass now proffers a host of theories for an award of attorney fees on statutory grounds. She argues those statutory predicates extend, after an initial award by an arbitrator, to authorize a trial court to award additional fees incurred in securing confirmation of an arbitrator's award. In particular, Glass invokes section 1033.5, subdivision (a)(10)(B), which makes statutory attorney fee awards recoverable as costs, rather than subdivision (a)(10)(A) on which Glass relied below for contractual attorney fees. Glass now offers other statutory bases for an award of attorney fees, including the California Arbitration Act's general costs provision, section 1293.2, which does not refer to attorney fees, and she also invokes provisions of the CLRA and ASFA, i.e., Civil Code sections 1780, subdivision (e), and 2983.4, respectively.

For its part, Veros contends it would have been improper for the trial court to award post-arbitration attorney fees because the underlying arbitration agreement vested the arbitrator, not the court, with authority to award attorney fees. Veros also observes that the FAA does not provide for post-arbitration attorney fees. Veros suggests that if Glass believed she was entitled to post-arbitration attorney fees she was required to seek those fees from the arbitrator because such fees would constitute a new, additional award, rather than trial court enforcement of an existing award. Glass contends general California procedural rules for enforcing a judgment, including confirming an arbitration award as a prelude to enforcing it, are not preempted by the FAA. In response, Veros argues Glass should not be able to obtain confirmation fees and costs from an adversary because the FAA does not require parties to confirm an award before enforcing it. Veros also argues the trial court had no authority to award fees even if Glass had requested statutory rather than contractual fees because, as a holder, Veros's liability was derivative of SCCC's. But Glass's motion did not assert SCCC was liable for any additional attorney fees after the arbitration.

We need not resolve these contentions for the simple reason that the trial court did not err in ruling against Glass on the argument she actually presented, namely, that she was entitled to post-arbitration sums as contractual attorney fees due from Veros. As already discussed, there was no such contract.<sup>3</sup>

Glass suggests we may decide her asserted entitlement to attorney fees on new statutory theories she puts forward on appeal because they present pure questions of law, or alternatively, that we remand for the trial court to do so. But just as any plaintiff is the master of his or her complaint (*Aryeh v. Canon Business Solutions, Inc.* (2013)

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<sup>3</sup> We decline to address an issue which is not before us—the general circumstances under which a plaintiff who receives an arbitration award may request and receive additional attorney fees from the trial court related to enforcing the judgment. Similarly, we deny Glass's request for judicial notice of irrelevant Holder Rule authority.



55 Cal.4th 1185, 1202), Glass was the sole architect of her motion, and it is not for us to resolve alternate theories, if any, that she might have advanced. Moreover, the volume of new briefing she presents on appeal, and the complexity of the new issues she raises, persuades us it would be imprudent for us to decide these contentions in the first instance. We also question the fairness of resolving the case on arguments not presented below, or requiring the court or the parties to re-litigate the thorny factual and legal predicates Glass belatedly presents. We therefore decline to do either.

### **DISPOSITION**

The trial court's ruling denying post-arbitration fees and interest is affirmed. Respondent is entitled to its costs on appeal.

GOETHALS, J.

WE CONCUR:

O'LEARY, P. J.

THOMPSON, J.